

105TH CONGRESS
2D SESSION

H. R. 4667

To enhance consumer privacy, prevent unfair and deceptive practices, and
protect children's privacy.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 1998

Mr. MARKEY introduced the following bill; which was referred to the
Committee on Commerce

A BILL

To enhance consumer privacy, prevent unfair and deceptive
practices, and protect children's privacy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electronic Privacy Bill
5 of Rights Act of 1998”.

1 **TITLE I—INTERNET PRIVACY**
2 **PROTECTION FOR CHILDREN**

3 **SEC. 101. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
4 **AND PRACTICES IN CONNECTION WITH THE**
5 **COLLECTION AND USE OF PERSONAL INFOR-**
6 **MATION FROM AND ABOUT CHILDREN ON**
7 **THE INTERNET.**

8 (a) REGULATIONS.—

9 (1) IN GENERAL.—It shall be unlawful for any
10 operator of a website or online service that is di-
11 rected to children, or any operator that has actual
12 knowledge that it is collecting personal information
13 from a child, to collect personal information from a
14 child under the age of 13 in violation of the regula-
15 tions prescribed under paragraph (2).

16 (2) CONTENTS.—Not later than one year after
17 the date of enactment of this Act, the Commission
18 shall prescribe regulations to prevent the improper
19 collection of information from children under the age
20 of 13. Such regulations shall—

21 (A) require that any website or online serv-
22 ice that is directed to children that collects per-
23 sonal information from children—

24 (i) provide clear, prominent, under-
25 standable notice of the information collec-

tion, use, and disclosure practices of the operator through the website or online service;

(ii) obtain verifiable parental consent for the collection, use, or disclosure of personal information from children who are under the age of 13; and

(iii) provide a parent—

(I) access to the personal information of the child of that parent collected by that website or online service; and

(II) the opportunity to refuse to permit any further use or future collection of personal information referred to in subclause (I) and notice of that opportunity; and

(B) require that the operator of the website or online service concerned to establish and maintain reasonable procedures to ensure the confidentiality, security, accuracy, and integrity of personal information collected from children through the website or online service.

(b) ENFORCEMENT.—

1 (1) TREATMENT OF REGULATIONS.—A regula-
2 tion prescribed under subsection (a) shall be treated
3 as a rule defining an unfair or deceptive act or prac-
4 tice under section 18(a)(1)(B) of the Federal Trade
5 Commission Act (15 U.S.C. 57a(a)(1)(B)).

6 (2) ENFORCEMENT.—Subject to section 103, a
7 violation of a regulation prescribed under subsection
8 (a) shall be treated as a violation of a rule defining
9 an unfair or deceptive act or practice prescribed
10 under section 18(a)(1)(B) of the Federal Trade
11 Commission Act.

12 **SEC. 102. SAFE HARBORS.**

13 (a) IN GENERAL.—In prescribing regulations under
14 section 101, the Federal Trade Commission shall provide
15 incentives for efforts of self-regulation by commercial
16 website operators to implement the protections described
17 in subsection (a) of that section.

18 (b) SAFE HARBORS.—The incentives referred to in
19 subsection (a) shall include provisions for ensuring that
20 a person will be deemed to be in compliance with the re-
21 quirements of the regulations under section 101 if that
22 person applies guidelines that—

23 (1) are issued by appropriate representatives of
24 the computer industry; and

1 (2) are approved by the Federal Trade Commis-
2 sion upon making a determination that the guide-
3 lines meet the requirements of the regulations issued
4 under section 101.

5 **SEC. 103. ADMINISTRATION AND APPLICABILITY OF ACT.**

6 (a) IN GENERAL.—Except as otherwise provided, this
7 title shall be enforced by the Federal Trade Commission
8 under the Federal Trade Commission Act (15 U.S.C. 41
9 et seq.).

10 (b) PROVISIONS.—Compliance with the requirements
11 imposed under this title shall be enforced under—

12 (1) section 8 of the Federal Deposit Insurance
13 Act (12 U.S.C. 1818), in the case of—

14 (A) national banks, and Federal branches
15 and Federal agencies of foreign banks, by the
16 Office of the Comptroller of the Currency;

17 (B) member banks of the Federal Reserve
18 System (other than national banks), branches
19 and agencies of foreign banks (other than Fed-
20 eral branches, Federal agencies, and insured
21 State branches of foreign banks), commercial
22 lending companies owned or controlled by for-
23 eign banks, and organizations operating under
24 section 25 or 25(a) of the Federal Reserve Act

1 (12 U.S.C. 601 et seq. and 611 et seq.), by the
2 Board; and

3 (C) banks insured by the Federal Deposit
4 Insurance Corporation (other than members of
5 the Federal Reserve System) and insured State
6 branches of foreign banks, by the Board of Di-
7 rectors of the Federal Deposit Insurance Cor-
8 poration;

9 (2) section 8 of the Federal Deposit Insurance
10 Act (12 U.S.C. 1818), by the Director of the Office
11 of Thrift Supervision, in the case of a savings asso-
12 ciation the deposits of which are insured by the Fed-
13 eral Deposit Insurance Corporation;

14 (3) the Federal Credit Union Act (12 U.S.C.
15 1751 et seq.), by the National Credit Union Admin-
16 istration Board with respect to any Federal credit
17 union;

18 (4) part A of subtitle VII of title 49, by the
19 Secretary of Transportation with respect to any air
20 carrier or foreign air carrier subject to that part;

21 (5) the Packers and Stockyards Act, 1921 (7
22 U.S.C. 181 et seq.) (except as provided in section
23 406 of that Act (7 U.S.C. 226, 227)), by the Sec-
24 retary of Agriculture with respect to any activities
25 subject to that Act; and

1 (6) the Farm Credit Act of 1971 (12 U.S.C.
2 2001 et seq.) by the Farm Credit Administration
3 with respect to any Federal land bank, Federal land
4 bank association, Federal intermediate credit bank,
5 or production credit association.

6 (c) EXERCISE OF CERTAIN POWERS.—For the pur-
7 pose of the exercise by any agency referred to in sub-
8 section (b) of its powers under any Act referred to in that
9 subsection, a violation of any requirement imposed under
10 this title shall be deemed to be a violation of a requirement
11 imposed under that Act. In addition to its powers under
12 any provision of law specifically referred to in subsection
13 (a), each of the agencies referred to in that subsection may
14 exercise, for the purpose of enforcing compliance with any
15 requirement imposed under this title, any other authority
16 conferred on it by law.

17 (d) ACTIONS BY THE COMMISSION.—The Federal
18 Trade Commission shall prevent any person from violating
19 a rule of the Federal Trade Commission under section 101
20 in the same manner, by the same means, and with the
21 same jurisdiction, powers, and duties as though all appli-
22 cable terms and provisions of the Federal Trade Commis-
23 sion Act (15 U.S.C. 41 et seq.) were incorporated into and
24 made a part of this title. Any entity that violates such
25 rule shall be subject to the penalties and entitled to the

1 privileges and immunities provided in the Federal Trade
2 Commission Act in the same manner, by the same means,
3 and with the same jurisdiction, power, and duties as
4 though all applicable terms and provisions of the Federal
5 Trade Commission Act were incorporated into and made
6 a part of this title.

7 (e) EFFECT ON OTHER LAWS.—Nothing contained in
8 the Act shall be construed to limit the authority of the
9 Federal Trade Commission under any other provisions of
10 law.

11 **SEC. 104. REVIEW.**

12 (a) IN GENERAL.—Not later than 5 years after the
13 effective date of the regulations initially issued under sec-
14 tion 101, the Federal Trade Commission shall—

15 (1) review the implementation of this title, in-
16 cluding the effect of the implementation of this title
17 on practices relating to the disclosure of information
18 relating to children; and

19 (2) prepare and submit to Congress a report
20 the results of the review under paragraph (1).

21 **SEC. 105. DEFINITIONS.**

22 In this title:

23 (1) CHILD.—The terms “child” and “children”
24 means an individual or individuals, respectively,
25 under the age of 16.

1 (2) OPERATOR.—The term “operator” means
2 any person operating a website on the World Wide
3 Webs for commercial purposes, or operating any on-
4 line service, and includes any person offering prod-
5 ucts or services for sale through that website or on-
6 line service, involving commerce—

7 (A) among the several States or with 1 or
8 more foreign nations;

9 (B) in any territory of the United States
10 or in the District of Columbia, or between any
11 such territory—

12 (i) and another such territory; or

13 (ii) and any State or foreign nation;

14 or

15 (C) between the District of Columbia and
16 any State, territory, or foreign nation.

17 Such term does not include any non-profit entity
18 that would otherwise be exempt from coverage under
19 section 5 of the Federal Trade Commission Act (15
20 U.S.C. 45).

21 (3) DISCLOSURE.—The term “disclosure”
22 means, with respect to personal information—

23 (A) the release of information in identifi-
24 able form by a person to any other person for
25 any purpose; or

1 (B) making publicly available information
2 in identifiable form by any means including by
3 a public posting, through the use of a computer
4 on or through—

5 (i) a home page of a website;

6 (ii) a pen pal service;

7 (iii) an electronic mail service;

8 (iv) a message board; or

9 (v) a chat room.

10 (4) PARENT.—The term “parent” means a
11 legal guardian, including a biological or adoptive
12 parent.

13 (5) PERSONAL INFORMATION.—The term “per-
14 sonal information” means individually, identifiable
15 information about an individual, including—

16 (A) a first and last name;

17 (B) a home or other physical address;

18 (C) an e-mail address;

19 (D) a telephone number;

20 (E) a Social Security number; or

21 (F) any other information that would fa-
22 cilitate or enable the physical or online locating
23 and contacting of a specific individual, includ-
24 ing information that is associated with an iden-
25 tifier described in this paragraph in such man-

1 ner as to become identifiable to a specific indi-
2 vidual.

3 (6) VERIFIABLE PARENTAL CONSENT.—The
4 term “verifiable parental consent” means any rea-
5 sonable effort (taking into consideration available
6 technology) to ensure that a parent of a child au-
7 thorizes the disclosure of personal information and
8 subsequent use of that information before that infor-
9 mation is collected from that child.

10 (7) WEBSITE DIRECTED TO CHILDREN.—The
11 term “website directed to children”—

12 (A) means a commercial website that is—

13 (i) targeted to children;

14 (ii) directed to children by reason of
15 the subject matter, visual content, age of
16 models, language, characters, tone, mes-
17 sage, or any other similar characteristic of
18 the website; or

19 (iii) used by a commercial website op-
20 erator to knowingly collect information
21 from children; and

22 (B) includes any commercial website any
23 portion of which is directed to children, as spec-
24 ified in subparagraph (A).

1 **TITLE II—EXAMINATIONS OF**
2 **INTERNET PRIVACY PROTEC-**
3 **TIONS FOR ADULTS**

4 **SEC. 201. FEDERAL TRADE COMMISSION EXAMINATION.**

5 (a) PROCEEDING REQUIRED.—Within 6 months after
6 the date of enactment of this Act, the Federal Trade Com-
7 mission shall commence a proceeding—

8 (1) to determine whether consumers are able,
9 and, if not, the methods by which consumers may be
10 enabled—

11 (A) to have knowledge that consumer in-
12 formation is being collected about them through
13 their utilization of various telecommunications
14 services and systems;

15 (B) to receive conspicuous notice that such
16 information could be used, or is intended to be
17 used, without authorization by the entity col-
18 lecting the data for reasons unrelated to the
19 original communications, or that such informa-
20 tion could be sold (or is intended to be sold) to
21 other companies or entities;

22 (C) to give notice to indicate the particular
23 privacy preferences of the consumer with re-
24 spect to the practices described in subpara-
25 graphs (A) and (B);

1 (D) to exercise control over the collection
 2 of personal information and to stop the unau-
 3 thorized use, reuse, disclosure, or sale of that
 4 information;

5 (2) to solicit and review comment from the pub-
 6 lic and the National Telecommunication and Infor-
 7 mation Administration on the changes proposed pur-
 8 suant to paragraph (3); and

9 (3) to prepare recommendations to the Con-
 10 gress for any legislative changes required to correct
 11 such defects.

12 (b) SCHEDULE FOR FEDERAL TRADE COMMISSION
 13 RESPONSES.—The Federal Trade Commission shall, with-
 14 in 1 year after the date of enactment of this Act—

15 (1) complete any rulemaking required to revise
 16 Commission regulations to correct any defects in
 17 such regulations identified pursuant to subsection
 18 (a); and

19 (2) submit to Congress a report containing the
 20 recommendations required by subsection (a)(5).

21 **SEC. 202. FEDERAL COMMUNICATIONS COMMISSION EXAM-**
 22 **INATION.**

23 (a) PROCEEDING REQUIRED.—Within 6 months after
 24 the date of enactment of this Act, the Federal Commu-
 25 nications Commission shall commence a proceeding—

1 (1) to examine the impact of interconnected
2 communications networks of telephone, cable, sat-
3 ellite, wireless devices, and other technologies on the
4 privacy rights and remedies of the consumers of
5 those technologies, as described in paragraphs (1)
6 and (2) of section 101(a);

7 (2) to determine whether consumers are able,
8 and, if not, the methods by which consumers may be
9 enabled to exercise such rights and remedies;

10 (3) to determine whether common carriers have
11 taken adequate steps to secure the communications
12 infrastructure and its components against unauthor-
13 ized interception of communications and other per-
14 sonal information;

15 (4) to propose changes in the Commission's reg-
16 ulations to ensure that the effect on consumer pri-
17 vacy rights is considered in the introduction of new
18 telecommunications services and that the protection
19 of such privacy rights and network security is incor-
20 porated as necessary in the design of such services
21 or the rules regulating such services;

22 (5) to propose changes in the Commission's reg-
23 ulations as necessary to correct any defects identi-
24 fied pursuant to this section in such rights, rem-
25 edies, and security;

1 (6) to solicit and review comment from the pub-
2 lic and the National Telecommunication and Infor-
3 mation Administration on the changes proposed pur-
4 suant to paragraph (5); and

5 (7) to prepare recommendations to the Con-
6 gress for any legislative changes required to correct
7 such defects.

8 (b) SCHEDULE FOR FEDERAL COMMUNICATIONS
9 COMMISSION RESPONSES.—The Federal Communications
10 Commission shall, within 1 year after the date of enact-
11 ment of this Act—

12 (1) complete any rulemaking required to revise
13 Commission regulations to correct defects in such
14 regulations identified pursuant to subsection (a);
15 and

16 (2) submit to the Congress a report containing
17 the recommendations required by subsection (a)(6).

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